

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

JAMES L. NELSON,

Plaintiff,

v.

CAROLYN W. COLVIN,
Commissioner of Social Security,

Defendant.

Cause No. CV-12-06-BLG-SEH-CSO

ORDER

INTRODUCTION

Presently before the Court is Plaintiff's Amended Petition for Attorney Fees. (Court's Doc. 27). Defendant concedes that the award of fees under 406(b) is proper, but contests the claim for the \$350.00 filing fee paid to the Clerk of Court.

Defendant argues the claim for the filing fee cost is untimely and therefore waived. Defendant relies on Local Rule 54.1(a)(1), which provides that "[w]ithin fourteen (14) days after the entry of a judgment allowing costs, the prevailing party

may serve and file an application for the taxation of costs ... [and] [f]ailure to comply with any provision of [] subsection (a) will be deemed a waiver of all costs except Clerk's costs."

The Court is unpersuaded by Defendant's argument. Rule 54.1(a) clearly exempts "Clerk's costs" from the waiver. Plaintiff submits that no costs are sought other than the filing fee of \$350.00 paid to the Clerk. Defendant offers no compelling argument why the filing fees paid to the Clerk of Court do not comprise "Clerk's costs" which are specifically exempted by Local Rule 54.

Therefore, good cause appearing, IT IS ORDERED that:

1. Plaintiff's Amended Petition for Attorney Fees (Court's Doc. 27) is **GRANTED**. Defendant shall pay to Plaintiff an award of attorney's fees under 42 U.S.C. § 406(b) in the amount of \$7657.16. Defendant also shall pay to Plaintiff an award of costs in the amount of \$350 comprising the filing fee paid to the Clerk of Court.
2. The Clerk of Court shall notify the parties of the making of this Order.

DATED this 22nd day of May, 2013.

/s/ CAROLYN OSTBY
UNITED STATES MAGISTRATE JUDGE